

DECLARATION OF DEFERRED WATER AND SEWER CHARGES

THIS DECLARATION OF DEFERRED WATER AND SEWER CHARGES (this "**Declaration**") is made this ____ day of _____, _____, by _____ ("**Declarant**"), for the benefit of **FREESTATE UTILITIES, LLC**, a Maryland limited liability company ("**Company**").

W I T N E S S E T H:

A. Declarant is the owner of certain residential building lots in the development known as _____ (the "**Development**") located in Howard County, Maryland (the "**County**"), that are more particularly described on Exhibit "A" attached to and made a part of this Declaration (individually a "**Lot**" and collectively the "**Lots**"). Each Lot is intended for the construction of a _____ home.

B. Company or its affiliate has caused or will cause water and sewer pipes and transmission lines to be installed in the streets, common areas, public or private rights-of-way, and/or public utility easements within the Development and surrounding the Lots so that public water and public sanitary sewer service can be provided to the Lots (collectively the "**Water and Sewer Systems**").

C. Any portion of the Water and Sewer Systems that are located within a Lot are to be maintained by the "Owner" (defined below) of such Lot and any portion of the Water and Sewer Systems that are located within streets, common areas, public or private rights-of-way or public utility easements are to be maintained by the County. Neither Declarant nor Company shall have any responsibility for maintaining, repairing or replacing the Water and Sewer Systems. The term "**Owner**" shall mean the record owner, whether one (1) or more persons or entities, of a fee simple interest in any Lot but excluding those having such interest solely as security for the performance of an obligation.

D. The water and sewer service supplied to and used in connection with each Lot is to be furnished and billed for by the County. Such billings shall be the responsibility of the Owner of the Lot and are separate and apart from the "Water and Sewer Charges" established by this Declaration.

E. Declarant desires to establish certain charges upon the Lots, in accordance with this Declaration, for the Water and Sewer Systems to be paid by the Owners to Company, its designees, successors and assigns, over a period of _____ years, provided that Company shall have the right to collect Water and Sewer Charges in advance, and in monthly, quarterly, or bi-annual installments, as provided in this Declaration. Such installments are referred to individually as a "**Water and Sewer Charge**" and collectively as the "**Water and Sewer Charges**", and such terms shall also be deemed to refer to all applicable "Default Interest" (defined below), costs, late fees and attorneys' fees.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and sufficiency of which are acknowledged, Declarant declares that the Lots shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, occupied and used subject to the covenants, conditions, restrictions, obligations and charges set forth in this Declaration, which shall run with the Lots and be binding on all parties having any right, title or interest in all or any portion of the Lots, their respective heirs, personal representatives, successors, transferees and assigns, and which shall inure to the benefit of Declarant, Company, and their respective designees, successors, transferees and assigns:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated into and made a material part of this Declaration.

2. **Amount and Payment of Charges.**

(a) The Water and Sewer Charges (exclusive of Default Interest, costs, late fees, and attorneys' fees) shall be payable in the amount of _____ **Dollars per year for each Lot for a period of _____ years.**

(b) The Water and Sewer Charges with respect to each Lot shall commence to be payable on the earlier of the following (the "**Commencement Date**"): (i) the date that the Lot is first conveyed by Declarant or a "Builder" (defined below) to an Owner after the Lot is improved with a residential dwelling, or (ii) five (5) years after the date that this Declaration is recorded. The term "**Builder**" shall refer to any person or entity that acquires one or more unimproved Lots for the purpose of constructing residential dwelling unit(s) on such Lot or Lots. Unless sooner paid in full as provided below, the Water and Sewer Charges for each Lot shall terminate on the date that is _____ years after the Commencement Date (the "**Termination Date**"). Nothing in this Declaration shall be deemed to excuse the payment of any Water and Sewer Charges which accrue through and remain unpaid as of the Termination Date, including, without limitation, Default Interest, costs, late fees and attorneys' fees, and the obligation to pay such sums shall survive the Termination Date. The initial installment of Water and Sewer Charges for each Lot (the "**Initial Payment**") shall be pro-rated on a per diem basis for the period from the Commencement Date for that Lot through December 31st of the year in which such Commencement Date occurs and shall be due and payable, in advance, on such Commencement Date. Each installment of the Water and Sewer Charges subsequent to the Initial Payment shall be due and payable, in advance, on January 1st of each and every year following the Commencement Date for a period of _____ years, except that the final installment of the Water and Sewer Charges shall be pro-rated on a per diem basis for the period from January 1st of the _____ year through the Termination Date and such final installment shall be due and payable, in advance, on January 1st of the _____ year.

(c) It is the intent of this Declaration that the total Water and Sewer Charges payable over _____ years (exclusive of Default Interest, costs, late fees, and attorneys' fees) shall be _____ Dollars per Lot \$ _____ x _____ years].

(d) Notwithstanding the foregoing provisions of this Paragraph 2, Company, in its sole and absolute discretion, may allow or can require (i) any Owner to pay the annual Water and Sewer Charges in monthly, quarterly, bi-annual or annual installments as determined by Company,

and (ii) any Owner's mortgagee to escrow and pay to Company the Water and Sewer Charges. Any Water and Sewer Charges not paid within fifteen (15) days after the due date shall bear interest from the due date until paid at the lesser of (A) eighteen percent (18%) per annum or (B) the maximum rate permitted by law ("**Default Interest**"). **In addition to Default Interest, attorneys' fees, and collection costs, if any installment of Water and Sewer Charges is not paid within fifteen (15) days after its due date, Company may collect a late fee, as consideration for additional administrative costs incurred by Company in dealing with the delinquent payment, in an amount equal to (i) ten percent (10%) of the amount due for each month the payment remains outstanding (up to a maximum of three (3) such late fees during any calendar year), (ii) one and one-half percent (1.5%) of the amount due for each month the payment remains outstanding, or (iii) such other amounts as may be permitted by applicable law.** No Owner may waive or otherwise escape liability for Water and Sewer Charges provided for in this Declaration by non-use of the Water and Sewer Systems or abandonment of a Lot.

3. Establishment of Lien and Personal Obligation. Each Owner of a Lot (a) covenants and agrees to pay to Company all Water and Sewer Charges assessed against that Owner's Lot pursuant to this Declaration for so long as such Owner shall be a record owner of a fee simple interest in the Lot, (b) grants to Company, to secure payment of the Water and Sewer Charges assessed against that Owner's Lot, a lien upon the Lot against which the Water and Sewer Charges are assessed, and (c) grants to Company a power of sale and assents to the entry of a decree and order for sale with respect to that Owner's Lot upon a default by the Owner under this Declaration. The payment of Water and Sewer Charges assessed against each Lot shall also be the personal obligation of the Owner of the Lot as of the time that the Water and Sewer Charges are assessed. In the event that any Owner shall fail to pay the Water and Sewer Charges applicable to that Owner's Lot in accordance with this Declaration, Company shall be entitled to all legal and/or equitable relief as may be available under applicable law, including, without limitation, the right (i) subject to the provisions of Paragraph 12 below, to accelerate and declare to be immediately due and payable the full amount of all future installments of the Water and Sewer Charges assessed against that Owner's Lot (discounted in accordance with Paragraph 8 below), (ii) to bring an action at law against any Owner personally obligated to pay the Water and Sewer Charges, (iii) to foreclose on the lien against the Lot or Lots then belonging to that Owner in the manner now or hereafter provided for the foreclosure of mortgages, deeds of trust or other liens on real property in the State of Maryland pursuant to the power of sale or assent to a decree set forth in this Declaration or otherwise, (iv) to foreclose on the lien against the Lot or Lots then belonging to that Owner in the manner now or hereafter provided for pursuant to the Maryland Contract Lien Act, and/or (v) to institute such other legal and/or equitable proceedings as may otherwise from time to time be provided by applicable law. If any Owner shall fail to pay the Water and Sewer Charges applicable to that Owner's Lot in accordance with this Declaration, and Company shall institute any legal and/or equitable proceedings to collect the delinquent Water and Sewer Charges, then Default Interest, costs, late fees, and attorneys' fees equal to twenty percent (20%) of the sum claimed shall be added to the amount of the Water and Sewer Charges due and payable and shall constitute additional Water and Sewer Charges. All rights and remedies contained in this Declaration are cumulative and Company shall also have all other rights and remedies provided by law or in equity.

4. **Priority of Lien.** The lien for all Water and Sewer Charges (including, without limitation, all Default Interest, costs, late fees and attorneys' fees) provided for in this Declaration shall have priority from the date upon which this Declaration is recorded among the Land Records of the County ("**Land Records**") over any subsequently recorded or created lien, deed of trust, mortgage or other instrument encumbering any Lot. The sale or transfer of any Lot shall not affect any lien imposed against such Lot pursuant to this Declaration. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all accrued and unpaid Water and Sewer Charges (including, without limitation, all Default Interest, costs, late fees and attorneys' fees) against the Lot, without prejudice to the purchasing Owner's right to recover from the selling Owner amounts paid by the purchasing Owner for unpaid Water and Sewer Charges which accrued prior to the purchasing Owner's acquisition of title. However, no purchaser from an Owner shall be liable for, nor shall any Lot be conveyed subject to a lien for, any accrued and unpaid Water and Sewer Charges greater than the amount stated in any written certificate provided by Company in accordance with Paragraph 6 of this Declaration.

5. **Power of Sale.** In the event that Company shall elect to collect any delinquent Water and Sewer Charges by foreclosing its lien pursuant to the power of sale granted to it in this Declaration, Company hereby designates _____ (each a "**Collection Agent**") as its agent for purposes of instituting and conducting the foreclosure sale. Company reserves the right from time to time, in its sole discretion, to designate one or more persons as substitute Collection Agent by an instrument in writing and recorded among the Land Records. If at any time more than one person is designated as the Collection Agent, any one of the persons comprising the Collection Agent may act as the Collection Agent under this Declaration. In the event that Company shall designate a substitute Collection Agent, the prior Collection Agent shall thereupon be deemed to have been removed and the new Collection Agent shall thereafter have full power and authority to exercise such power of sale in accordance with this Declaration and applicable law, to the same extent as the Collection Agent originally named in this Declaration.

6. **Payment Certificate.** A certificate in writing, signed by a representative of Company, will be given promptly after receipt by Company of a written request for such certificate from any Owner of a Lot liable for the Water and Sewer Charges, which certificate shall set forth the amount of any accrued and unpaid Water and Sewer Charges outstanding with respect to that Lot, accrued Default Interest in accordance with Paragraph 2(d) of this Declaration, late charges in accordance with Paragraph 2(d) of this Declaration, and all costs and expenses incurred by Company in connection with its collection of such Water and Sewer Charges, including, without limitation, attorneys' fees, and such certificate shall be binding on Company as of the date of issuance. A charge not to exceed Fifty Dollars (\$50.00) may be collected by Company in advance for each such certificate so issued.

7. **Billing Statement.** All Water and Sewer Charges, Default Interest, costs, late fees and attorneys' fees payable in accordance with this Declaration shall be payable to Company, its successors, transferees, and assigns, in accordance with such billing statements as may be issued by Company, or its designee. However, failure to receive a bill for the Water and Sewer Charges shall not relieve any Owner of such Owner's liability to pay any Water and Sewer Charges, Default Interest, costs, late fees, or attorneys' fees due under this Declaration.

8. Prepayment. Any Owner may prepay at any time the Water and Sewer Charges attributable to such Owner's Lot by paying the amount computed by Company in accordance with this Paragraph, on or before the due date for the next installment of Water and Sewer Charges for that Lot, provided that such Owner is not then in default under this Declaration, and is current in the payment of all installments of the Water and Sewer Charges due through the prepayment date (including, without limitation, all Default Interest, costs, late fees and attorneys' fees). With respect to each Lot, the prepayment amount applicable at any given time shall be an amount equal to the sum of all unpaid installments of the Water and Sewer Charges attributable to that Lot through the Termination Date, discounted at a rate of six percent (6%) per annum. In return for such prepayment, including, without limitation, payment of all outstanding Default Interest, costs, late fees and attorneys' fees (which shall not be discounted), the Owner shall receive from Company a full release of that Owner's Lot from this Declaration, in recordable form, certifying that all payments under this Declaration have been discharged. No Owner, or former Owner, shall be entitled to reimbursement from Company of any prepaid Water and Sewer Charges.

9. Assignment; Transfer. All or any portion of the rights, reservations, interests, exemptions, powers, and/or privileges of Company under this Declaration may be assigned and transferred (exclusively or non-exclusively) by Company, and by the successors in interest to Company under this Declaration, to any other individual or entity, without notice to or the consent of any Owner or any other party, by instrument in writing recorded among the Land Records. Company and its successors in interest shall have the right to transfer, assign, pledge, or in any other fashion encumber its right to any or all of the Water and Sewer Charges (including, without limitation, Default Interest, costs, late fees and attorneys' fees).

10. Withdrawal. Company may withdraw any Lot or Lots from the operation and effect of this Declaration without the consent of any Owner or other person or entity. Such withdrawn Lot shall no longer be subject to the covenants, conditions, restrictions, obligations and charges of this Declaration except for any rights, reservations, interests, exemptions, powers, or privileges which are expressly reserved to Company in the instrument effectuating such withdrawal. Such withdrawal shall be made by recording a Supplementary Declaration among the Land Records, withdrawing the effect of the covenants, conditions, restrictions, obligations and charges of this Declaration from the withdrawn Lot.

11. Power of Attorney.

(a) There is hereby reserved to Company for itself (and for its successors, transferees and assigns to whom such right has been specifically assigned by Company in writing), the right, but not the obligation, to execute, on behalf of all contract purchasers, Owners, mortgagees, and other lienholders or parties claiming a legal or equitable interest in all or any portion of the Lots any agreements, documents, amendments and supplements to this Declaration which may be required by the Federal National Mortgage Association, the FHA, the VA, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the County, any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Lots, any public or private utility company designated by

Company, any institutional lender or title insurance company designated by Company, or to comply with any applicable laws or regulations.

(b) Each and every contract purchaser, Owner, mortgagee and other lienholder or party having a legal or equitable interest in all or any portion of the Lots automatically and irrevocably names, constitutes, appoints and confirms Company (and its successors, transferees and assigns to whom such right has been specifically assigned by Company in writing) as attorney-in-fact for the purpose of executing each agreement, document, amendment, supplement and other instrument referred to in Paragraph 11(a), subject to the limitations set forth below.

(c) No such agreement, document, amendment, supplement or other instrument which materially and adversely affects the value of any Lot, or substantially increases the financial obligations of an Owner, shall be made without the prior written consent of the affected Owner(s) and all holders of any mortgage(s) encumbering the Lot(s) owned by the affected Owner(s). Any such agreement, document, amendment, supplement or instrument which adversely affects the priority or validity of any mortgage which encumbers any Lot(s), shall not be made without the prior written consent of the holders of all such mortgages.

(d) This power of attorney is expressly declared and acknowledged to be coupled with an interest and shall run with the title to each Lot, and be binding upon the heirs, personal representatives, successors, transferees and assigns of all contract purchasers, Owners, mortgagees, and other lienholders or parties claiming a legal or equitable interest in any Lot. Further, this power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to the power of attorney. This power of attorney shall be vested in Company (and its successors, transferees and assigns to whom such right has been specifically assigned by Company in writing) until all Water and Sewer Charges are paid in full.

12. Eligible Mortgagee's Right to Cure Default. If an "Eligible Mortgagee" (defined below) exists for a particular Lot, upon a default under this Declaration by the Owner of such Lot, Company may not exercise its right to accelerate and declare to be immediately due and payable the full amount of all future installments of the Water and Sewer Charges assessed against such Lot until (a) a notice is sent to the Eligible Mortgagee (the "**Notice to Cure**") specifying the amount of Water and Sewer Charges due as of the date of the Notice to Cure along with a statement that the Eligible Mortgagee has the right to cure the Owner's failure to pay the outstanding Water and Sewer Charges within thirty (30) days of the date of the Notice to Cure; and (b) the outstanding Water and Sewer Charges remain unpaid after such thirty (30)-day cure period. The term "**Eligible Mortgagee**" refers to any institutional holder, insurer, or guarantor of a first mortgage on a Lot which provides a written request to Company, or its successors in interest with respect to this Declaration pursuant to a recorded assignment as contemplated in Paragraph 9 above, that it be informed of the Lot Owner's failure to pay any Water and Sewer Charges due under this Declaration (an "**Eligible Mortgagee Request**"). Each Eligible Mortgagee Request shall include the mortgagee's name and address and the street address of the Lot to which its mortgage relates. If there is no Eligible Mortgagee for a particular Lot, Company may exercise its right to accelerate and declare to be immediately due

and payable the full amount of all future installments of the Water and Sewer Charges assessed against such Lot without providing any opportunity to cure such default. Any Notice of Cure or Eligible Mortgagee Request shall be in writing and shall be deemed duly given if (i) personally delivered, with signed and dated receipt, (ii) sent by reputable commercial overnight delivery service, with signed and dated receipt, or (iii) mailed by certified mail, return receipt requested, first class, postage prepaid. Notices to Company shall be sent to: Freestate Utilities LLC, PO Box 441 Fulton, Maryland 20759, or to such other address as Company, its successors, assigns, or designees, may from time to time provide the Owners in billing statements or in other written notices.

13. Waiver. No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce this Declaration.

14. Severability. The terms and provisions of this Declaration are severable. In the event that any term or provision of this Declaration is invalid or unenforceable for any reason, the remaining terms and provisions shall remain in full force and effect.

15. Binding Effect. All provisions of this Declaration, including the benefits and burdens, shall touch, concern and run with the land, shall be binding upon the Owners and their respective heirs, personal representatives, successors, transferees and assigns and shall inure to the benefit of Declarant, Company, and their respective successors, transferees and assigns.

16. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male or female shall include all genders and the singular shall include the plural and vice versa.

17. Enforcement and Recordation. This Declaration shall be construed and enforced in accordance with the laws of the State of Maryland, excluding choice of law principles, and shall be effective upon its recordation among the Land Records.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

WITNESS:

DECLARANT:

By: _____ [SEAL]

COMPANY:

FREESTATE UTILITIES, LLC, a Maryland limited liability company

By: _____ [SEAL]

* * *

STATE OF MARYLAND

*

*

to wit:

*

COUNTY OF _____

On this ____ day of _____, _____, before me, the undersigned notary public for the aforesaid jurisdiction, personally appeared _____, known to me (or satisfactorily proven) to be the _____ and that he, in such capacity and being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

* * *

STATE OF MARYLAND

*

*

to wit:

*

COUNTY OF _____

On this ____ day of _____, before me, the undersigned notary public for the aforesaid jurisdiction, personally appeared _____, known to me (or satisfactorily proven) to be the Managing Member of Freestate Utilities, LLC, and that he, in such capacity and being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

NO TITLE EXAMINATION

EXHIBIT A

Description of the Lots

_____ and
recorded among the Land Records of Howard County, Maryland at Plat No.
_____.